IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1126 of 2007

Murugammal .. Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary
Prohibition and Excise Department
Fort St.George, Chennai-9.

2. The District Magistrate
and District Collector
Vellore District
Vellore-9. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.P.Krishnan
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - Anbu, husband of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Bootlegger and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the wife of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records relating to the

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detention order C3 Tha.Ka.order No.62/2007, dated 27.7.2007 of the second respondent, to quash the same and to direct the respondents to produce the detenu, now confined at Central Prison, Vellore before this Court and to set him at liberty.

3.1. The order of detention dated 27.7.2007 was passed on the basis of ground case in Crime No.417 of 2007 for alleged commission of offences punishable under Sections 4(1)(i), 4(1)(aaa), 4(1-A)(ii) of the Tamil Nadu Prohibition Act. The allegation against the detenu was that on 9.7.2007 when the Sub-Inspector of Police, Prohibition Enforcement Wing, Ranipet and his police party observed villages within its limits in connection with prohibition offences, they found the detenu pouring liquid from a plastic can, and on seeing the police party, the person who was standing for consuming the same escaped from the place. The detenu was arrested and he admitted the offences committed. They seized 250 Litres of poisonous odour country arrack. The samples of arrack seized were sent for chemical analysis and the report of the Assistant Director and Assistant Chemical Examiner to Government, Regional Forensic Science Laboratory, Vellore reveals that the samples contain 6.5 mgms% w/v of Atropine per 100 ml. a poisonous substance.

3.2. Apart from the above, the detaining authority also took note of the five adverse cases pending against the detenu, viz.,

i. Crime No.697 of 2005 registered on the file of Ranipet Police Station for the offence punishable under Section 4(1)(i) of the Tamil Nadu Prohibition Act with reference to the occurrence said to have taken place on 9.11.2005;

ii.Crime No.702 of 2006 registered on the file of Ranipet Prohibition Enforcement Wing for the offence punishable under Section 4(1)(aa) of the Tamil Nadu Prohibition Act with reference to the occurrence said to have taken place on 1.12.2006;

iii.Crime No.129 of 2007 registered on the file of Ranipet Prohibition Enforcement Wing for the offence punishable under Section 4(1)(i) of the Tamil Nadu Prohibition Act with reference to the occurrence said to have taken place on 8.3.2007;

iv. Crime No.192 of 2007 registered on the file of Ranipet Prohibition Enforcement Wing for the offence punishable under Sections 4(1)(i) and 52-E of the Tamil Nadu Prohibition Act with reference to the occurrence said to have taken place on 4.4.2007; and

v. Crime No.191 of 2007 registered on the file of Ranipet

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Police Station for the offence punishable under Section 4(1) (aa) of the Tamil Nadu Prohibition Act with reference to the occurrence said to have taken place on 12.5.2007.

3.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order and public health, passed the impugned order.

4. Heard both sides. We have perused the materials produced before us.

5. The main ground of attack in this case is that even though the detaining authority passed the detention order only on 27.7.2007, the sponsoring authority, even before recommending for detention, had represented before the Principal Sessions Judge, Vellore in Crl.M.P.No.5278 of 2007 on 13.7.2007 itself, that the detenu is likely to be detained under Tamil Nadu Act 14 of 1982, which shows the pre-determination of mind on the part of the sponsoring authority.

6. The detention order was passed on 27.7.2007. But, the sponsoring authority, represented on 13.7.2007 before the learned Principal Sessions Judge, Vellore in Crl.M.P.No.5278 of 2007, a bail petition, that the detenu is likely to be detained under Tamil Nadu Act 14 of 1982. This, in our considered opinion, would show the pre-determination of mind on the part of the sponsoring authority. The detaining authority, while passing the order of detention, had failed to take notice of this pre-determined averment made by the sponsoring authority.

For the reason aforesaid, the detention order is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The order of detention dated 27.7.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in any other crime. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To:

1.The Secretary to Government
Prohibition and Excise Department
State of Tamilnadu
Fort St.George, Chennai-9.

2.The District Magistrate
and District Collector
Vellore District
Vellore-9.

3.The Public Prosecutor
High Court, Madras.

4.The Superintendent,
Central Prison, Vellore.

5.The Joint Secretary to Government Public (Law and Order)
Fort St. George, Chennai-9.

VRK (CO)
km/20.11.

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